IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1809 OF 2004

Vishwasrao Naik Sahakari Sakhar
Karkhana Limited ... Petitioner

versus

Deshbhakta Ratnapanna Kumbhar
Panchganga Sahakari Sakhar
Karkhana Limited ... Respondent

Shri P.S.Dani for petitioner.
Shri A.A.Kumbhakoni for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 15th February 2006

PC :

1. By this petition under Article 227 of the Constitution of India, the petitioner - original appellant is challenging an order passed by the Maharashtra State Co-operative Appellate Court, Mumbai on 17th December 2003 in Appeal No.45 of 2002.

2. The above appeal was preferred by the petitioner-appellant to challenge the judgement and award dated 30th March 2002 passed by learned Judge, Co-operative Court, Kolhapur in Dispute No.778 of 1980.

3. The above dispute was filed in the

Co-operative Court by the respondent-disputant claiming from the petitioner herein a sum of Rs.38,75,268.68 Ps. along with interest @ 18% p.a. from the date of dispute till payment or realisation.

4. The case of the respondent-disputant is that pursuant to an agreement which was arrived at between the parties on 19th February 1977, the respondent supplied sugar cane to the petitioner and it appears from the record that the quantity of the sugar cane supplied is more by about 25,000 M.T. than agreed by the abovementioned agreement.

5. It is not disputed that as far as quantity agreed between the parties and covered by the subject agreement the petitioner has paid varied sums to the respondent. However,the dispute remained insofar as the excess quantity supplied. The excess quantity is mentioned in the dispute application and it is also stated therein that the disputant forwarded an account to the petitioner, which reflected the payment made towards quantity as per the agreement and also showed the outstanding towards the excess quantity supplied. The excess quantity being

computed in terms of the account, the claim was made and a decree in the aforesaid sum was claimed by the respondent against the petitioner.

6. The claim was naturally disputed by the petitioner and in the written statement which was filed, the contention raised is that both, the petitioner as well as respondent, are sugar factories. The petitioner and respondent are not producers of sugar cane but are processors thereof. The issues between two sugar factories on account of supply of sugar cane would not fall within the purview of the provisions and more particularly Section 91 of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act"). Reference was made to the bye-laws and other documents to support this submission. The second plea that was raised, was that the excess quantity supplied is not on account of any arrangement or agreement between the parties but the same was dumped on the petitioner by the respondent as the same was lying unutilised. Insofar as rate is concerned, it was pointed out by the petitioner that the averments in the dispute are not substantiated and the same as claimed, is not due and payable. A reference can usefully be made in this behalf to paragraphs 9

and 10 of the written statement.

7. It was also contended that the dispute is not within limitation. The transaction is between 18th February 1977 till April 1977 and the present dispute admittedly is time barred.

8. After the materials produced by both sides were considered in the light of the issues that were framed, the Trial Court concluded that the respondent has proved the claim in the dispute. It also held that it has jurisdiction to decide the dispute. It specifically negatived the plea of the petitioner that the sugar cane rate was fixed at Rs.120/- per M.T. While holding that the petitioner has proved that excess sugar cane was supplied, the Trial Court has negatived the case of the petitioner that it is permissible for it to deduct cutting and harvesting charges. It also held that the dispute is within limitation. The issue nos.10, 11 and 12 are also relevant. Ultimately, consistent with the findings on the issues referred to above, an award was made and while doing so, the plea raised with regard to the settlement before the Hon’ble Minister for Co-operation also came to be negatived by the Trial Court.

9. The judgement and award of the Trial Court was subject matter of the aforesaid appeal and the appeal has also been rejected.

10. The Lower Appellate Court has only made a modification to the award of the Trial Court with regard to the rate of interest and directed payment of interest at prevailing rate and not 18% p.a..

11. Shri Dani appearing for the petitioner has contended that the Trial Court lacked jurisdiction. He invites my attention to Section 91 of MCS Act and contends that insofar as business of the co-operative societies in question is concerned, the same is not supplying or buying of sugar cane from each other but processing of the sugar cane for ultimate sale as sugar. In such circumstances, the dispute was not maintainable even if the same satisfies the ingredients set out in Section 91(1) of the MCS Act.

12. His second submission was that the dispute was time barred. He submits that considering the date and period of supply and terms of the

agreement, it is clear that the dispute cannot be filed, as is contended after a period of 30 days, which is the period prescribed for making payment but ought to have been filed within three months from the date of supply. His submission is that it is not so filed and therefore, the claim is time barred.

13. His third contention is that the Courts below have failed to consider the aspect as to whether the liability to pay excess amount accrues on account of fixation of the price of sugar cane supplied for the purpose of respondent society. In other words, the rate at which the respondent society purchases the sugar cane from it's members, cannot be the rate which could be applied for the supplies made and that too in excess to the petitioner by the respondent. That is the rate which prevails between the members of respondent and such rate cannot bind the petitioner.

14. Being aware, as I am, of the jurisdiction of this Court under Article 227 of the Constitution of India and limited powers that can be exercised thereunder, it is not possible to accede to any of the submissions of Shri Dani. As has been

rightly pointed out by Shri Kumbhakoni, these are not matters which can be said to be pure questions of law. On the issue of jurisdiction, it is not disputed that the respondent society's business may be or may not be of supplying sugar cane but if one of the parties to the dispute deals in supply of sugar cane as a part of it's trading and business activities, then it is enough for the maintainability of the dispute u/s 91 of the MCS Act. That is clear from the reading of Section 91(1). It is contended and rightly so that if Section 91(1) with it's non obstante clause is read as a whole, it is clear that the words "if both parties thereto are one or other of the following" cannot be left out as is suggested by Shri Dani. In any event, both sugar cane factories here are collecting sugar cane from their producer members. The petitioner factory approached the respondent and sought sugar cane supplies for the purposes of it's activities. The supplies were under an agreement in writing. That agreement was in pursuance of the business of the petitioner factory. The business permitted is to collect the sugar cane from the producer members or non members for processing and converting into sugar and ultimate supply in the market. That is the basis upon

which the dispute proceeded. That is how the materials which have been produced by the parties in support of their contention on the issue of jurisdiction has been appreciated and appraised. It is not permissible for me to reappraise and reappreciate them in my limited jurisdiction under Article 227 of the Constitution of India.

15. Insofar as the plea of limitation is concerned, considering the averments in the dispute as also the terms of agreement, the Courts below have negatived the submission which was raised before them and reiterated by Shri Dani. The term of 30 days period has been provided by the agreement for payment from the date of supplies. Therefore, the breach would start and would have to be computed from the expiry of this period and so computed from the date of supplies and more particularly the last supply, the present dispute filed on 25th August 1980 is within limitation. This is again a finding of fact which is rendered after perusing the terms of agreement and the evidence adduced by the parties. It is not permissible to arrive at a different conclusion only because of the plea of Shri Dani that the excess supplies would not be governed by the clause or term in the

agreement in question.

16. As far as rate is concerned, even that has been determined keeping in mind the pleas raised in the dispute and in the written statement and the evidence adduced. Considering that the sugar cane suppliers who are members of the factory are paid in accordance with the rates which are determined by the Government and the prevalent rate has been taken into account while awarding the sums, it is not possible to agree with Shri Dani that the petitioner is not liable to pay at that rate to the respondent-disputant.

17. In the light of the aforesaid, the three contentions raised by Shri Dani cannot be accepted. The award of the Trial Court as modified by the Lower Appellate Court does not require any interference. Petition dismissed.

18. At this stage Shri Kumbhakoni invited my attention to the operative part of the Lower Appellate Court which grants prevailing rate of interest. As agreed by the parties, the rate prevailing at the relevant time was 15.5%. However, since the award of the Trial Court and modified by the Lower Appellate Court is of 2003,

and thereafter the position of sugar factories is not very sound, interest of justice would be subserved, if the rate of interest is reduced to 12% p.a.. The decree be drawn up accordingly. Subject to this modification the petition is dismissed.

(S.C.DHARMADHIKARI, J.)